

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR-12-11

-against- : United States Courthouse
Central Islip, New York
RAKESH K. PUNN, :
July 17, 2013
Defendant. : 3:00 p.m.
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TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography
Transcript produced by Computer

1 (The following took place at 3:07 p.m.)

2 THE CLERK: For oral argument, US vs Rakesh
3 Pun. .

4 Please identify yourselves. First for the
5 government.

6 MR. BODE: Allen Bode for the government, your
7 Honor. Good afternoon.

8 THE COURT: Good afternoon.

9 MR. LEVINE: Arnold Levine for Jesse, Sippy
10 Pun. .

11 THE COURT: Arnold Levine is it?

12 MR. LEVINE: Yes.

13 THE COURT: Obviously we have a court reporter
14 here, so if you would just identify yourselves when you're
15 speaking because I understand that counsel for defendant
16 is also on the line.

17 MR. BACHRACH: Yes, your Honor. Michael
18 Bachrach and Elizabeth Macedonio for the defendant.

19 MS. MACEDONIO: Good afternoon your Honor.

20 THE COURT: Good afternoon.

21 I assume that Ms. Macedonio and Mr. Bachrach
22 have received copies of the Court's order which was
23 entered yesterday, denying the motion to quash.

24 In addition, Mr. Levine, I just have one
25 inquiry.

1 When were you retained?

2 MR. LEVINE: I was retained, I think it was
3 around -- it was late May. I think it was just a few days
4 before May 29th when I met with Mr. Bode.

5 THE COURT: So you were retained sometime around
6 May 26th, something like that?

7 MR. LEVINE: Yes, around there. I can find the
8 exact date for you.

9 THE COURT: All right. And you were going to
10 join in the motion at some point in time. The Court
11 rendered its decision denying the relief that defendant
12 Punn asked for, correct?

13 MR. LEVINE: Yes, judge.

14 I hadn't joined in earlier for a couple of
15 reasons. One is, I met with Mr. Bode and we were
16 discussing, we had a discussion regarding the Fifth
17 Amendment issue that seems to be going a long way towards
18 obviating the -- issue.

19 And I really wasn't sure that I had standing on
20 the abuse of process grounds.

21 THE COURT: Right.

22 MR. LEVINE: But, and I'm not sure if your
23 decision, to tell you the truth, whether you thought that
24 I didn't have standing on those grounds or only on
25 privilege grounds.

1 Mr. Bode has advised me that he received your
2 orders granting immunity. And I hadn't received it yet.
3 And he told me I would receive them tomorrow morning
4 before my client has to testify. And so -- whether they
5 provided all of the information to which I'm entitled.
6 And so I would, I want to join their motion to the extent
7 that I legally can.

8 THE COURT: Well, I don't think you have
9 standing either. And I understand that there is now a
10 motion for reconsideration by the defendant Punn. And he
11 certainly doesn't have standing. So I don't know how much
12 a motion to reconsider will accomplish other than delay
13 the investigation of the Grand Jury.

14 In terms of the merit, forgetting the standing
15 for the moment, your request for interlocutory appeal; my
16 understanding is that it's only recognized with regard to
17 pretrial orders such as I have, that they're only
18 immediately appealable in criminal cases under the
19 Collateral Order Doctrine. In other words, orders
20 granting or denying bail, denials of motion to dismiss the
21 indictment pursuant to the double jeopardy clause, denial
22 of a motion to dismiss the indictment pursuant to the
23 Speech and Debate Clause, and orders requiring the
24 defendant to be involuntarily medicated so as to become
25 competent to stand trial. None of those situations exist

1 here, clearly on behalf of the Punn children that I have
2 been able to discern.

3 So if you have anything to add to that, other
4 than you want copies of their statements, I'll hear your
5 arguments on that, and then I'll deal with the copies of
6 the statements, the DE 5 later. So to make it perfectly
7 clear, you don't have an immediate right to appeal the
8 Court's denial on the motion to quash.

9 MR. BACHRACH: Your Honor, may I also comment on
10 the -

11 THE COURT: Why don't you let Mr. Levine finish
12 his presentation to the Court, and then I'll hear what you
13 have to say, Mr. Bachrach.

14 MR. BACHRACH: Thank you.

15 MR. LEVINE: Well your Honor, I have read your
16 decision, perhaps wrongly, to say that -- it's divided
17 into two parts, basically, two reasons you're denying the
18 motion to quash. One was that the defendant did not have
19 standing to assert my clients' constitutional rights, with
20 which I agree. And the other part was, you seem to --
21 which was that it is a process to be an abuse of process
22 because you agree, Mr. Bode agrees that --

23 THE COURT: Right.

24 MR. LEVINE: I didn't think that you were saying
25 that the defendant didn't have standing to move to quash

1 on the abuse of process issue. Is that --

2 THE COURT: Yes. That is essentially what I'm
3 saying. I agreed with both of Mr. Bode's arguments.

4 One, there is no standing for the defendant
5 Punn, who you're not representing, to move to quash.

6 Two, that the government has certainly
7 sufficiently answered any claim that the Grand Jury
8 investigation is being convened for an improper purpose.

9 So now you have your motion that you made
10 sometime this morning, which essentially -- sometime late
11 last night. When did you file it?

12 MR. LEVINE: I filed it, I emailed it out around
13 10:30 last night.

14 THE COURT: So you have your motion now, and
15 your asking for a decision on it. Mr. Bode has not
16 responded. But I really don't see where you have standing
17 at this point in that you have orders of immunity that
18 have been granted to your client.

19 Mr. Bode, can you respond?

20 MR. BODE: And yes, just regarding the order of
21 immunity, your Honor. As the Court may or may not be
22 aware because this is a fairly rare procedure here in
23 federal court -- I have never done it before myself -- The
24 immunity orders, basically the government has to get
25 permission from the Department of Justice which took a

1 number of weeks in this case. Mr. Levine indicated the
2 defense, or that Sippy Punn and Jesse Punn would not
3 testify without immunity. And it then goes to the
4 District Court. We filed and got a miscellaneous number.
5 We went to Judge Spatt. We have an order.

6 But until the Grand Jury happens and the right
7 is invoked the order is not in effect. But I told
8 Mr. Levine, you know rather than have them invoke and
9 then, and then step out and show it to them, I'll show it
10 to them in advance. But I can't give them a copy because
11 it's not in effect until that happens.

12 THE COURT: I don't think you're arguing that
13 point. Are you, Mr. Levine?

14 MR. LEVINE: No. After I received that email I
15 changed my motion to redact, to take that part out.

16 THE COURT: Great.

17 MR. LEVINE: Of course, since I haven't seen it
18 yet, I don't know whether there will be issues or anything
19 to do with the order tomorrow morning. It's possible that
20 I'll look at it and say I don't think this gives all 6002
21 protection. But if I think that it does, then that's,
22 that --

23 THE COURT: So your main issue is then,
24 according to your motion, the appealability of the court's
25 denial of your motion to quash.

1 MR. LEVINE: Right. There is not only my motion⁸
2 to quash. But given Mr. Punnett's motion to quash, that is
3 the defendant Mr. Punnett, that if he's seeking an
4 interlocutory appeal, and seeking a stay, then I would ask
5 that my clients not have to testify until that issue is
6 decided.

7 THE COURT: Well, let's handle your clients in
8 terms of whether or not you have a right on behalf of your
9 clients to seek an immediate appeal. And I think I have
10 just rendered a decision on that, that you do not have
11 that right.

12 MR. LEVINE: Right.

13 THE COURT: Now, let me ask Mr. Bode to deal
14 first with your motion. And then I'll hear defendant
15 Punnett's motion with regard to a motion to reconsider my
16 denial of the motion to quash.

17 MR. BODE: I'll be fairly brief, your Honor.
18 Obviously the courts agree with what the Court has held
19 thus. And far be it for me to argue myself out of what I
20 already have.

21 But just in terms of the specific grounds that
22 Mr. Levine cites on pages 3 to 4 of his motion. One is
23 regarding the statements which I'll deal with in a moment.

24 And then two is the, basically wanting to join
25 in the defendant's motion to quash which has already been

1 denied by the court. So I won't argue regarding the
2 second part. We just won't deal with that. I think when
3 Mr. Bachrach speaks --

4 THE COURT: So just tell me what you want to
5 deal with on page 3.

6 MR. BODE: Just on, I would just note, your
7 Honor -- I'm sorry -- the government had -- I don't
8 have --

9 THE COURT: Just talk into the microphone,
10 otherwise they can't hear you.

11 MR. BODE: Sorry.

12 I don't have the advantage of the minutes that
13 counsel cited of the prior proceedings, which I don't
14 believe were included in any of the papers. But I can say
15 to the best of my recollection; the Court has consistently
16 asked the government to look into the matter to see about,
17 and urged -- I'll even go so far as to say urged the
18 government to release the statements to, which aren't
19 actually prior Grand Jury testimony in the federal case,
20 they're prior Grand Jury testimony of Sippy Punn before
21 the state, and affidavits by both Sippy and Jesse Punn in
22 the state.

23 THE COURT: This is Grand Jury testimony or
24 sworn depositions.

25 MR. BODE: It's Grand Jury testimony by Sippy

1 Punn in the state.

2 THE COURT: All right.

3 MR. LEVINE: I believe there are also -- I'm
4 sorry, this is Arnold Levine. I think there were also
5 statements made, perhaps under oath.

6 MR. BODE: That's correct.

7 MR. LEVINE: Or Nassau County district --

8 MR. BODE: That is correct.

9 And what I told what I have indicated, I believe
10 I have indicated to the Court and I don't have the
11 minutes. But as I have indicated to Mr. Levine, I wanted
12 to look at the law regarding those prior statements before
13 I turn those things over. In looking at the law I found
14 what appears to be well-settled that a witness is not
15 entitled to a copy of Grand Jury testimony.

16 And specifically I'll hand up the case to the
17 Court. It's United States -- well, I take that back. In
18 Re: Grand Jury subpoena John Doe.

19 It's found at 72 F.3d 271. I'll hand it up to
20 the Court. And in it the Second Circuit deals squarely
21 with this question, you know, finding the witness is not
22 entitled to that. It also deals with whether the witness
23 can take notes in the prior Grand Jury. That's not an
24 issue here.

25 But what is interesting is that the Second

1 Circuit cites a dissent by Justice Brennan in a Supreme
2 Court case. And that specifically is on page 5 of the
3 Second Circuit's opinion.

4 And what Justice Brennan noted, and which is
5 quoted by the Second Circuit, is; the reason for not
6 providing a witness with the prior Grand Jury testimony is
7 because that access can expose that witness to potential
8 intimidation. And making it possible for those with power
9 over the witness to monitor his or her testimony.

10 And then the Second Circuit also cited another
11 case there towards the bottom of page 5 where they
12 noted -- it's In Re: Bottari, 453 F.2d 372, where they
13 quoted part of Bottari, which is: *It would be naive on*
14 *the part of the Court to think that appellant seeks these*
15 *answers for his own protection as distinguished from*
16 *attempted discovery by other persons interested in the*
17 *Grand Jury proceedings.*

18 And in evaluating this case, especially as to
19 these two young witnesses, adults but young witnesses, who
20 previously indicated at the time of the state Grand Jury
21 proceedings that they weren't literally afraid their
22 father would kill them when he found out that they were
23 the ones who turned him in.

24 And let me say I have other indications of
25 intimidation as well that the government is investigating.

1 I'll say, I think I have said it on a prior occasion, that
2 is one of the focuses of the government's superseding
3 Grand Jury investigations, intimidation, witness
4 intimidation. Under those circumstances we feel it's not
5 appropriate to, and there is clearly no right under the
6 case law, for the witnesses to have their prior Grand Jury
7 testimony even though it's not federal Grand Jury, their
8 prior statements. For our purposes it's just a statement
9 because it's from another proceedings, something that we
10 obtained.

11 But because we want to -- and the reason why the
12 witness intimidation purposes, that having those priors
13 statements is problematic, is that witnesses can be,
14 basically have to provide their testimony to the person
15 who is intimidating them. The person who is intimidating
16 them can check over that testimony and say, *Well what did*
17 *they say?* You know, *What did they say about me?* And it
18 creates an issue of intimidation. And that's why I did
19 not want to give over these statements.

20 And Mr. Levine for his part, although he is an
21 independent lawyer for the two witnesses here, I believe
22 frankly he was on the list of attorneys that was provided
23 by Doctor Punnett's counsel that they picked from. And he
24 has indicated he is not interested in bringing the
25 children in to speak with the government. So I can't

1 speak with them. He has also, in my view asserted what
2 is, although we went and obtained immunity it's a spurious
3 immunity claim, the claim that the two children faced a
4 possibility of a prosecution for possessing the child
5 pornography for the period of time before they turned it
6 over to authorities.

7 I frankly view that as a spurious claim of
8 immunity, just as a way to delay, and it has had the
9 effect of delaying this for two months. And especially
10 where those witnesses previously testified to those facts.
11 Those statements could be used if there were such, going
12 to be such a prosecution. And there clearly isn't. We're
13 grateful that they came forward and exposed what their
14 father had done. So that's in a nutshell my answer
15 regarding that issue, your Honor.

16 What I am asking the Court to do today, is, and
17 it seems as if the Court is so inclined, and I would just
18 urge the Court to do so, is to deny both the motion to
19 reconsider and to the extent that it is a new motion to
20 quash by the attorney for the two witnesses, to deny those
21 today. I would ask your Honor to inquire of Mr. Bachrach
22 particularly, and Mr. Levine as well, if they do intend to
23 appeal to the circuit. Never mind the fact that the
24 government waives and the Court believes it is not
25 appealable, obviously they can try. Because if that's the

1 case, what I'm going to ask the Court to do is to decide
2 these motions today so THAT we can get that interlocutory
3 appeal moving; that they be directed to do that within a
4 week so that we can keep this moving.

5 And if, if a stay is appropriate -- I don't
6 assert that it is -- but that we just do a one week stay
7 and we get this, and we direct them to file the appeal and
8 we get this moving. That is my request, your Honor.
9 Because the immunity took awhile because we had to, we
10 have to go through three or four lawyers of review in my
11 office, and it has go down to the Department of Justice,
12 and it has to go to a District Court judge here.

13 So the Grand Jury process has been frustrated by
14 a couple of months here, at least in terms of these
15 witnesses, not as to other matters. But that is my goal.
16 Is to get this moving. Thank you.

17 THE COURT: Thank you.

18 MS. MACEDONIO: Your Honor, this is Elizabeth
19 Macedonio.

20 THE COURT: I only need the first person
21 talking, because I don't need two lawyers on the same
22 representation here.

23 MS. MACEDONIO: I just wanted to respond to
24 Mr. Bode's comments with respect to --

25 THE COURT: So you're handling the motion to

1 quash, or the reconsideration of that denial?

2 MS. MACEDONIO: Mr. Bachrach is going to be
3 handling that.

4 THE COURT: So why don't you let Mr. Bachrach
5 respond.

6 MR. BACHRACH: Thank you, your Honor, a couple
7 of points.

8 First, I just want to direct to your Honor's
9 initial comment that you believe that the defendant has no
10 standing to file an interlocutory appeal under the
11 collateral order doctrine. The Second Circuit has stated
12 In Re: Grand Jury Proceedings, I believe it's at 623 F.2d
13 at 124.

14 THE COURT: F.2d at 124?

15 MR. BACHRACH: Specifically, that to file a
16 motion to intervene as a right is an appealable final
17 order under 28 USC Section 1291.

18 THE COURT: Mr. Bachrach, are you on a speaker
19 phone?

20 MR. BACHRACH: I am not, your Honor.

21 THE COURT: The court reporter says there is an
22 echo and it makes it difficult to understand.

23 MR. BACHRACH: Is this a little bit better, your
24 Honor?

25 THE COURT: Slightly. All right, please

1 continue.

2 MR. BACHRACH: I apologize, your Honor. This
3 isn't my phone. I don't know why it is causing an echo.

4 THE COURT: Is it a cell phone?

5 MR. BACHRACH: No, it is a desk phone. I think
6 this is an office phone.

7 But what I was stating is that In Re: Grand
8 Jury Proceedings, that is in 1980 the Second Circuit
9 specifically held that a denial of a motion to intervene
10 is in fact an appealable final order under 28 USC 1291.
11 The Court went on to conclude also that where a subpoena
12 is directed against a third party, and the movant, in this
13 case the defendant, claims that compliance with the third
14 party subpoena would violate his constitutional interests.

15 THE COURT: The court reporter indicates she
16 can't understand you.

17 MS. MACEDONIO: Can the court reporter hear me?

18 THE COURT: Yes.

19 MS. MACEDONIO: Maybe it's just a bad line.

20 Can we try a speaker and see if it doesn't work
21 better?

22 THE COURT: Sure.

23 MR. BACHRACH: Let me try again, your Honor.
24 I'm not sure which part of the comment you heard or not,
25 but if I'm being repetitive --

1 THE COURT: Why don't you start over. You were
2 telling me about In Re: Grand Jury 623 Fed.2d, I believe
3 it was 124, that the denial of a motion to intervene is
4 appealable. And then you went on to start your argument
5 with the third party issues, constitutional impact on a
6 person who is seeking to intervene.

7 MR. BACHRACH: Correct, your Honor.

8 And at 623 F.2d at 124, it is the same case.
9 And in that the Second Circuit explains that where a
10 subpoena is directed against a third party, the movant,
11 who in this case would be Doctor Punnett, who claims that
12 compliance with the subpoena would violate a
13 constitutional interest, that movant would also be
14 permitted an immediate appeal.

15 So based upon that 1980 Second Circuit case,
16 which itself is a Second Circuit interlocutory appeal, I
17 do believe that we do have a right to appeal under the
18 Collateral Order Doctrine. This would be one of the
19 exceptions. But I do make that proposition that we do
20 have standing. It is actually that denial of standing
21 that is one of the two things that gives us a right to an
22 immediate appeal.

23 The Second Circuit might disagree. They might
24 agree with you on the merits, but they might disagree.
25 And that is why I think that is an issue that we can

1 appeal immediately.

2 THE COURT: But it doesn't make a difference,
3 sir, because in essence what I'm saying is whether you
4 have standing or not, the denial of a motion to quash is
5 not an exception under the Collateral Order Doctrine. So
6 you're not entitled to an immediate appeal.

7 MR. BACHRACH: What I'm arguing, your Honor, is
8 that under this case, specifically under this case a
9 denial of a motion to quash is appealable, is immediately
10 appealable under 28 USC 1291. That's the argument. And
11 that's the basis that I would raise in the Second Circuit
12 for my standing to appeal. Both as a denial of, denial of
13 the right to intervene, as well as the denial of the
14 motion to quash.

15 And in the reasoning of this courts have held
16 that there is this immediate appealability. It's because,
17 One, either documents are turned over promptly, or in this
18 case once the witnesses testify, the proverbial cat will
19 be out of the bag. And that is something that can not be
20 repaired by waiting to the end of trial to appeal.

21 So any time you have an instance where you can
22 not repair the error after trial because it would be too
23 late, that's when an earlier appeal is permitted. And
24 again, under this specific case that I do believe we do in
25 fact have the ability to appeal immediately. And that

1 being the case, I think that a stay would be warranted.

2 I still say one thing, though, your Honor. I do
3 agree with Mr. Bode on something, and that is that I do
4 think that the appeal could be handled fairly quickly. I
5 don't know that we could get it in in a week, as Mr. Bode
6 has suggested. But it often takes a week just to get a
7 docket number from the Second Circuit. But I do think the
8 appeal could be handled on an expedited basis. And we
9 wouldn't oppose if the government moved in the Second
10 Circuit to proceed on an expedited basis. We wouldn't
11 oppose that motion.

12 Our concern here more than anything is that the
13 Grand Jury process is not abused and it is not going
14 forward prior to the appeal being decided. That we are
15 seeking a stay. But we are perfectly happy to go forward
16 with the rest of this case with an adjudication of the
17 other pending motions.

18 And as your Honor knows, our whole argument that
19 an abuse of the Grand Jury proceeding is taking place is
20 all predicated on the belief that the government is just
21 trying to interview the witnesses before the motions can
22 be fully litigated. Obviously if the motions were fully
23 litigated it would eliminate our appeal.

24 THE COURT: Mr. Bode, would you like to respond
25 to that?

1 MR. BODE: Judge, in Mr. Bachrach's -- I'm sorry
2 if I mispronounce it -- in his motion he talks on page 2
3 in terms of the, the supposed right here, which would be a
4 new constitutional right from any point of view, I would
5 submit. And he cites no cases. And it's the middle of
6 page 2. The disruption of the family through efforts to
7 pit family members against family members in a criminal
8 proceeding.

9 There is no case cited because there is no such
10 right. But in any event, I would note that this was a
11 case that began when family members came forward to report
12 what was an egregious criminal conduct. This isn't
13 something where the government is splunking (sic) about
14 trying to cause trouble between family members. This is
15 -- the case is what it is, and it came in that way prior
16 to our involvement.

17 In terms of the appellate rights. I agree with
18 Mr. Bachrach just to the extent that he obviously can make
19 the motion, the appeal with the circuit. And I submit
20 that there is no standing.

21 I think we can do this on a very expedited
22 basis. I mean bail appeals are handled within, you know,
23 a matter of days. I don't know why this -- and Grand Jury
24 matters I think are given precedence in the Circuit, I
25 would assume, and especially if your Honor orders the

1 defense to file by a date certain. And we, you know, we
2 would agree that we would move that it be heard on an
3 expedited basis so we can get the Grand Jury process
4 moving.

5 THE COURT: So Mr. Bode, you're consenting to,
6 for whatever it's worth, the appeal going forward?

7 MR. BODE: I had a debate with, I spoke with my
8 deputy chief of appeals, your Honor, an hour or two ago.
9 He indicated, you know, if the defense basically -- if
10 your Honor were -- I said, Should I ask that the Court,
11 you know, order the witnesses to come in tomorrow, or
12 should I ask for a week, you know, agree to a week stay?

13 And he indicated, you know, it wasn't a sure
14 thing that they would get any sort of stay from the
15 Circuit. He thinks that this is a particularly weak
16 appeal in terms of the defense.

17 But if -- we would be answering this into the
18 wee hours of tonight. And I have to tell the jurors at
19 six o'clock, you know, what to expect regarding tomorrow.

20 So given all of that, your Honor, I'll agree to
21 a one week, a one week stay. I want to keep this moving.
22 I want to keep this tight. And I would ask you to direct
23 that they file their appeal by Monday so that we can --
24 and then we can try to get this moving. And I'll talk
25 with my, you know, we'll talk with the motion clerk and

1 see how quickly we can get it resolved.

2 But if we stay it for a week, and if it's not
3 possible to deal with it sooner, then, you know, then in
4 two weeks we'll come back to the Court. But at least it
5 keeps it tight. It keeps this case moving.

6 THE COURT: Mr. Bachrach, if the government is
7 willing to consent to a one week stay leading to a two
8 week stay, essentially.

9 MR. BODE: Maybe.

10 THE COURT: Providing you an opportunity to get
11 going on this, then I certainly am not going to stop that
12 process.

13 But the Court's ruling is; one, you don't have
14 standing; two, there is no constitutional interest on
15 behalf of your client; and three, the Court does not see
16 this as making an exception to the Collateral Order
17 Doctrine.

18 But I'll put it over for two weeks for you to
19 seek a stay. And I will stay the Grand Jury and the
20 witnesses so Mr. Levine will not have to come in.

21 As far as any additional motions to reconsider,
22 I think you have made your arguments. I have made my
23 rulings. And Mr. Levine, I think it is clear that your
24 clients have gotten immunity. You will not be seeing the
25 immunity orders per se. And unless you have some special

1 Supreme Court case that says they're entitled to their
2 prior statements, based on case law that Mr. Bode has
3 submitted to the Court I am denying your motion for the
4 reasons previously stated.

5 MR. LEVINE: Well, your Honor, can I just, after
6 Mr. Bode spoke regarding the statements, we sort of talked
7 about a lot of other things, really --

8 THE COURT: Sure. What would you like to say
9 about the statements?

10 MR. LEVINE: First, that what I was told by
11 Mr. Bode at the meeting that I had with him; it is not
12 that he had the law, but that he had agreements that he
13 had with Nassau County about whether there was anything
14 prohibiting, and whether it was under an agreement with
15 Nassau County from disclosing statements from Nassau
16 County. And I haven't heard yet that there is anything in
17 an agreement with Nassau County that it would be violated
18 if he gave me the statements.

19 THE COURT: But now you're talking about
20 something other than the law. I'm hearing arguments on
21 the law right now.

22 MR. LEVINE: Right. The law that he cited said
23 there is not an entitlement. It doesn't say that he is
24 not allowed to give it, or that you don't have discretion
25 to order him to give it to me. In fact your Honor had

1 said ON May 9th during the hearing on May 9th, quoting on
2 page 20: *I expect that they would receive those*
3 *statements because they were probably made four years ago,*
4 *if I had to guess.*

5 And then on July 13th -- I'm sorry, May 13th --
6 at the other hearing, it came up again. And I believe
7 Mr. Zissou was -- let me make sure -- yes, Mr. Zissou was
8 speaking. And you said: *I will give him more time to*
9 *respond if that is what he needs -- the suppression*
10 *motion. But you should understand our motion is devoted in*
11 *large part to what the Nassau County investigators claim*
12 *the Punn children told him at the time the warrant was*
13 *issued.*

14 And your Honor said, quote: *That is why I told*
15 *Mr. Bode to make sure they got the DE 5s, whatever they*
16 *were, the statements of the children to the adult*
17 *children's counsel that is still continuing.*

18 So your Honor has already ordered that they turn
19 statements over. He acknowledged that these statements
20 were given at least three years ago regarding events that
21 happened three years before that. My clients are young,
22 three years, six years is a good portion of their lives.
23 And I think that to just put them in the Grand Jury at
24 this point saying like; one, I think it is going to lead
25 to them saying in the Grand Jury, saying, I don't recall.

1 Can I see my clients' statement to refresh my
2 recollection?

3 And things as opposed to -- up front --
4 whether they refresh their recollections -- there is no
5 intimidation, they're represented by counsel now. It may
6 have occurred in Nassau when they weren't represented. It
7 may have occurred before they were represented here. But
8 they're represented, and I represent them. They're not
9 going to be intimidated.

10 Their father is in prison. As far as I know
11 their father has no supporters except for his lawyers in
12 that regard. As far as I know there is no family getting
13 along with the children who are trying to intimidate them.
14 They have not seemed to be intimidated at all by anybody
15 on the defendant's side. So I don't see any danger of
16 intimidation here. I see that your Honor has already
17 ordered that they get to see their statements knowing --
18 there is no harm in them seeing their statements only to
19 the extent that --

20 THE COURT: Well first of all, I may have been
21 wrong in ordering the statements. Mr. Bode has presented
22 some case law to, contrary to my understanding.

23 And let me just ask you, Mr. Levine. On this
24 issue of intimidation, how were you retained or how did
25 you come to be retained by the Punn adult children?

1 MR. LEVINE: I think they were given my name by
2 Ms. Macedonio and Mr. Zissou. They came in separately to
3 see me. They did not -- nobody from Mr. Punn's team was,
4 the defense team was present.

5 Obviously nobody from Mr. Punn's family was
6 present. They came to my office, spoke to me freely. I
7 sent them a letter, a letter of engagement. They both
8 signed it and gave it back to me. And I told them many
9 times that despite how they got my name originally, I
10 represent them and their interests alone.

11 And if they tell me, however they tell me to act
12 is how I'm going to act. If they want me to act in some
13 way to try to help their father, that is their call. If
14 they don't, then that is their call. I'll do whatever it
15 is that they want to do in terms of testifying in the
16 Grand Jury and making motions.

17 In fact, one reason that the motion was filed as
18 late as it was last night, is that I actually finished it
19 a couple of hours before I emailed it out, was because I
20 was having a conference call with my clients last night
21 that was scheduled for 8:30. And I wanted to speak with
22 them and explain what was happening, and to make sure they
23 still wanted, that they wanted me to file that motion.

24 So I don't see that being intimidated by anybody
25 basically at all.

1 THE COURT: So your remaining argument now is
2 that you want copies of the materials before your clients
3 go in to testify, if they're being required to testify.

4 MR. LEVINE: Yes.

5 THE COURT: Okay.

6 MR. BODE: Judge, I'm at a disadvantage as to
7 the minutes, because presumably Mr. Levine was provided
8 these minutes by Doctor Punn's counsels. They didn't
9 attach them to the motions, so I don't have them.

10 So, my recollection is, like the Court, after
11 the Court indicated what it indicated, I said I would look
12 into it. I know I didn't commit because I hadn't had a
13 chance to look at the law yet.

14 THE COURT: But you generally have my orders,
15 *But I'll look into it, judge.*

16 And then I follow up with, *turn over the*
17 *materials.*

18 Apparently you looked into it and you maintain
19 that it's not, should not be turned over to the witnesses.
20 That is the government's position. I will review the case
21 law. And Mr. Levine, you can send in any case law that
22 you think contradicts what Mr. Bodes has said.

23 But right now I don't see any basis to find that
24 you have standing or the other grounds on which you have
25 moved for relief here. I don't think you have any

1 appealable rights.

2 But the testimony of your clients before the
3 Grand Jury is stayed for two weeks. And I expect then in
4 the interim the appeal will be immediately processed in
5 order to avail the appeal. Just one minute.

6 MR. LEVINE: Judge, just -- I doubt that I'll be
7 appealing on behalf of the Punn children. But I do think
8 that doesn't affect Mr. Bachrach's arguments regarding
9 Doctor Punn's right to appeal, and further stay which is
10 still in effect. Because if Doctor Punn wins the Grand
11 Jury is an abuse of process, then my clients would not
12 testify in the Grand Jury presumably at that point.

13 THE COURT: We'll see if that happens, sir. But
14 for purposes of this application, Ms. Macedonio and
15 Mr. Bachrach, you're waiving the appearance of your
16 client?

17 MS. MACEDONIO: Yes, your Honor.

18 THE COURT: Okay. So two weeks, get the appeal
19 in, get it processed. If you have to go down personally
20 to the Second Circuit to get it done, get it done quickly.
21 And I will look to the other motions that are pending
22 before the Court and render decisions on those, hopefully.

23 MR. BACHRACH: Your Honor, before conclude.

24 This is Mr. Bachrach.

25 Just, I think it is clear, but just so there is

1 no question on appeal -- Did your Honor affirmatively
2 state that you are in fact denying the motion for
3 reconsideration.

4 THE COURT: Absolutely denying the motion for
5 reconsideration.

6 MR. BACHRACH: Thank you, your Honor.

7 THE COURT: Okay. And that is based primarily
8 on really the lack of substantive grounds on the
9 underlying motion to quash the subpoena.

10 MR. BACHRACH: I understand. I just wanted the
11 record clear. I appreciate it, your Honor

12 THE COURT: Okay, anything else?

13 MR. BODE: Just two housekeeping matters, your
14 Honor.

15 I'll say to Mr. Levine, I'll move the proceeding
16 to August 1st at 11:00 am. Unless you want me to issue a
17 subpoena I presume that you will accept that as the new
18 date?

19 MR. LEVINE: Yes.

20 MR. BODE: And then while we have Ms. Macedonio
21 and Mr. Bachrach on the phone, your Honor; do you want to
22 schedule a status, maybe in a few weeks on the substantive
23 case or not?

24 THE COURT: Yes. I still have the motions for
25 suppression and so on.

1 MR. BODE: So we'll await your Honor's decision
2 and then we'll schedule a status in Punn's case.

3 THE COURT: Yes.

4 MS. MACEDONIO: Your Honor, given the expedite
5 nature of the appeal, can we ask who the Court report
6 tears so he would can't get the minutes.

7 THE COURT: I'm sorry, I didn't catch that last
8 part.

9 MS. MACEDONIO: Can we have the name of the
10 Court reporter so we can get the minutes?

11 THE COURT: Ellen.

12 MS. MACEDONIO: Thank you, Ellen.

13 THE COURT: Thank you, good-bye.

14 This is the end of the proceeding.

15 (The proceedings were concluded at 3:47 p.m.)
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